

EXHIBIT C, Sample CAPTA Contract

 <p>Washington State DEPARTMENT OF SOCIAL & HEALTH SERVICES</p>	<p align="center">PERSONAL SERVICE CONTRACT</p> <p align="center">CAPTA Legal Services</p>		<p>DSHS Contract Number:</p> <p>Resulting From Procurement Number:</p>	
<p>This Contract is between the state of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is governed by chapter 39.29 RCW.</p>			<p>Program Contract Number:</p> <p>Contractor Contract Number:</p>	
CONTRACTOR NAME		CONTRACTOR doing business as (DBA)		
CONTRACTOR ADDRESS		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)	DSHS INDEX NUMBER	
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS	
DSHS ADMINISTRATION	DSHS DIVISION		DSHS CONTRACT CODE	
DSHS CONTACT NAME AND TITLE		DSHS CONTACT ADDRESS		
DSHS CONTACT TELEPHONE	DSHS CONTACT FAX		DSHS CONTACT E-MAIL ADDRESS	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?		CFDA NUMBERS		
CONTRACT START DATE		CONTRACT END DATE		CONTRACT MAXIMUM AMOUNT
<p>EXHIBITS. The following Exhibits are attached and are incorporated into this Contract by reference:</p> <p><input type="checkbox"/> Exhibits (specify):</p> <p><input type="checkbox"/> No Exhibits.</p>				
<p>The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DSHS only upon signature by DSHS.</p>				
CONTRACTOR SIGNATURE		PRINTED NAME AND TITLE		DATE SIGNED
DSHS SIGNATURE		PRINTED NAME AND TITLE		DATE SIGNED

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SPECIAL TERMS AND CONDITIONS

[NOTE: The final Special Terms and Conditions shall be negotiated with the RFP #0634-205 Apparently Successful Bidder(s).]

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Central Contract Services" means the DSHS central headquarters contracting office, or successor section or office.
 - b. "Contract" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, and materials incorporated by reference.
 - c. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.
 - d. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
 - e. "Debarment" means an action taken by a Federal official to exclude a person or business entity from participating in transactions involving certain federal funds.
 - f. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
 - g. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.
 - h. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://slc.leg.wa.gov/>.
 - i. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
 - j. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
 - k. "Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
 - l. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://slc.leg.wa.gov/>.

2. Purpose. The purpose of this Contract is to:

The purpose of this Contract is to provide legal services to the Department of Social and Health Services (DSHS), Children's Administration (CA), in representing DSHS' interests in adjudicative proceedings regarding challenges to findings of abuse or neglect under the Child Abuse Prevention and Treatment Act (CAPTA), as set forth in 42 USC 5101 et seq. and 42 USC 5116 et seq.

3. Statement of Work.

The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

- a. The Contractor shall provide legal services to CA for the purpose of representing DSHS' interests in adjudicative proceedings brought under CAPTA, to challenge DSHS' findings of abuse or neglect in child abuse or neglect cases.
- b. Legal services shall be provided as requested by CA, with hearings expected to be before an Administrative Law Judge (ALJ) or the DSHS Board of Appeals.
- c. The Contractor shall schedule and represent DSHS in CAPTA hearings before the Office of Administrative Hearings and the DSHS Board of Appeals.
 - (1) The Contractor shall coordinate with the CA Deputy Director of the Division of Field Operations in preparing for hearings and in representing DSHS' interests.
 - (2) Hearings may be held at various locations within the state of Washington.
- d. The Contractor or their designated staff person shall be an attorney at law, duly licensed to practice law in the state of Washington, and shall be the attorney who shall provide the legal and other services described under this Contract.
- e. The Contractor shall not subcontract or otherwise assign to any other person or attorney any of the Contractor's duties or obligations under this Contract without the express, advance, written approval of CA management.
 - (1) This requirement does not apply to the Contractor's secretary, administrative assistant, paralegal or other person in the Contractor's employ who provides administrative or legal assistance to the Contractor personally.
- f. The Contractor shall have regular contact and coordination with the CA Deputy Director of the Division of Field Operations, which shall consist of at least weekly telephone contact and quarterly in-person meetings as necessary for both administrative and educational purposes. This Contract shall:
 - (1) Allow for a discussion of both new and pending cases and for a comparison and evaluation of the upcoming calendar for each attorney/representative; and
 - (2) Allow for an evaluation of case outcomes following hearings, for educational purposes that will be helpful to the attorney and representatives and to CA.
- g. The Contractor may use information gained by reason of this Contract only for the purpose of this Contract. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law or with the prior written consent of the person to whom the information pertains.

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- (1) The Contractor shall maintain the confidentiality of all information gained by reason of this Contract. The Contractor shall ensure that all such information, in particular client information, that the Contractor may have access to in the course of performing this Contract, shall remain in the possession of DSHS.
- (2) The Contractor shall not remove any such information from the DSHS premises where the services are to be provided, except for the purposes of representing DSHS at hearings as described above. In the event that any such information shall come to be in the possession of the Contractor or the Contractor's staff, outside of DSHS premises, the Contractor shall return all such information to DSHS or, in the event that such information has been destroyed and cannot be returned, shall certify the destruction of such information.

4. Consideration. Total consideration payable to Contractor for satisfactory performance of the work under this Contract is up to a maximum of \$_____, including any and all expenses, and shall be based on the following:

5. Billing and Payment.

- a. The Contractor shall render a monthly invoice for services performed under this Contract on State of Washington Invoice Voucher forms (Form A-19), prepared in the manner prescribed by DSHS.
- b. The voucher shall clearly indicate that it is "FOR SERVICES RENDERED IN PERFORMANCE UNDER DSHS CONTRACT NO. _____ FOR THE MONTH OF _____, 2000__."
- c. The Form A-19 invoice vouchers shall be submitted to:

_____, Program _____
Division of Field Operations
Children's Administration
PO Box 45700
Olympia, WA 98504-5700

- d. The Contractor shall contact _____ at (360) 902-_____ concerning billing questions.
- e. The Contractor shall bill for each month of service on a separate Form A-19. The Form A-19 shall state the month services were provided.
- f. Claims for payment submitted by the Contractor shall be paid by DSHS if received by DSHS no later than sixty (60) days from the date services were rendered.
- g. A payment will be generated at the end of the month in which an invoice is submitted.
- h. DSHS may stop payment to the Contractor if reports required under this Contract are delinquent or incomplete.

6. Payment Only for Contracted Services

DSHS shall pay the Contractor only for contracted services provided in accordance with this Contract. If this Contract is terminated for any reason, DSHS shall pay only for services provided through the date of termination.

7. Funding Stipulations

- a. Duplicate Billing. The Contractor must not bill other funding sources for services rendered under this Contract which would result in duplicate billing to different funding sources for the same service. Furthermore, the Contractor shall ensure that no subcontractor bills any other funding sources for

services rendered under this Contract, which would result in duplicate billing to different funding sources for the same service.

- b. No Federal Match. The Contractor shall not use funds payable under this Contract as match toward federal funds without the prior written permission of DSHS.
- c. Supplanting. The Contractor shall use these funds to supplement, not supplant the amount of federal, state and local funds otherwise expended for services provided under this Contract.

8. Recovery of Fees for Noncompliance

In the event the Contractor bills for services provided and is paid fees for services that DSHS later finds were either (a) not delivered or (b) not delivered in accordance with applicable standards or the requirements of this Contract, DSHS shall have the right to recover the fees for those services from the Contractor, and the Contractor shall fully cooperate during the recovery process.

9. Prohibition of Use of Funds for Lobbying Activities

- a. The Contractor shall not use funds payable under the Contract for lobbying activities of any nature. The Contractor certifies that no state or federal funds payable under this Contract shall be paid to any person or organization to influence, or attempt to influence, either directly or indirectly, an officer or employee of any state or federal agency, or an officer or member of any state or federal legislative body or committee, regarding the award, amendment, modification, extension, or renewal of a state or federal contract or grant.
- b. Any act by the Contractor in violation of this prohibition shall be grounds for termination of this Contract, at the sole discretion of DSHS, and shall subject Contractor to such monetary and other penalties as may be provided by law.

10. Business/Financial Assessment

- a. By accepting this Contract, the Contractor authorizes DSHS to obtain a financial assessment and/or credit report of the Contractor's corporation or business, and its principals, at any time prior to or during the term of this Contract, if DSHS in its discretion determines such action appropriate.
- b. DSHS may deny, suspend, terminate, or refuse to renew or extend a contract if, in the judgment of DSHS, the Contractor or any partner, officer, director or managerial employee of the Contractor, or an owner of 50% or more of the Contractor entity, or an owner who exercises control over the Contractor's daily operations, is determined by DSHS to:
 - (1) Have a credit history adversely affecting the Contractor's ability to perform the contract, in the judgment of DSHS;
 - (2) Have failed to meet financial obligations as the obligations fell due in the normal course of business; or
 - (3) Have filed for bankruptcy, reorganization, or receivership within five years of the start date of the contract.

11. Contract Suspension

DSHS may take certain actions in the event the Contractor, or any partner, officer or director of the Contractor, or any staff or employee of the Contractor, should be investigated by a local, county, state or federal agency regarding any matter that may, if ultimately established, either (a) result in a conviction for violating a local, county, state or federal law, or (b) adversely affect, in the sole judgment of DSHS, (1) the delivery of services under this Contract or (2) the health, safety or welfare of DSHS

clients for the benefit of whom services are provided under this Contract. In any such instance, DSHS may without prior notice suspend the Contract pending outcome of the investigation, or DSHS may without prior notice take other lesser action, such as disallowing a staff member, employee, or other person associated with the Contractor from providing services, or from having contact with DSHS clients, until the investigation is concluded and a final determination made by the investigating agency.

12. Insurance.

The Contractor shall at all times comply with the following insurance requirements.

a. General Liability Insurance

The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Department of Social & Health Services (DSHS), and elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

In lieu of general liability insurance mentioned above, if the contractor is a sole proprietor with less than three contracts, the contractor may choose one of the following three general liability policies but only if attached to a professional liability policy, and if selected the policy shall be maintained for the life of the contract:

Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the contractor wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), its elected and appointed officials, agents, and employees shall be named as additional insureds.

or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), and elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

or

Premises Liability Insurance and provide services only at their recognized place of business, including coverage for bodily injury, property damage with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Department of Social & Health Services (DSHS), and elected and appointed officials, agents, and employees of the state, shall be named as Additional Insured.

b. Business Automobile Liability Insurance

The Contractor shall maintain a Business Automobile Policy on all vehicles used to transport clients, including vehicles hired by the Contractor or owned by the Contractor's employees, volunteers or others, with the following minimum limits: \$1,000,000 per accident combined single limit. The Contractor's carrier shall provide DSHS with a waiver of subrogation or name DSHS as an Additional Insured.

c. Professional Liability Insurance (PL)

The Contractor shall maintain Professional Liability Insurance or Errors & Omissions insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; Aggregate - \$2,000,000.

d. Worker's Compensation

The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and DSHS shall not be held responsible for claims filed for Worker's Compensation under RCW 51 by the Contractor or its employees under such laws and regulations.

e. Employees and Volunteers

Insurance required of the Contractor under the Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

f. Subcontractors

The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under the Contract.

g. Separation of Insureds

All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision.

h. Insurers

The Contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a Best's Reports rating of B++, Class VII, or better. Surplus Lines insurance companies will have a rating of A-, Class VII, or better.

i. Evidence of Coverage

The Contractor shall submit Certificates of Insurance to the DSHS point of contact located on page one of the contract for each coverage required of the Contractor under the Contract. The Certificate shall identify the DSHS Central Contract Services, P O Box 45811, Olympia, Washington 98504-5811 as Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance. The Contractor is not required to submit to DSHS copies of Certificates of Insurance for personal automobile insurance required of the Contractor's employees and volunteers under the contract.

The Contractor shall maintain copies of Certificates of Insurance for each subcontractor as evidence that each subcontractor maintains insurance as required by the Contract.

j. Material Changes

The insurer shall give DSHS Central Contract Services, 45 days advance written notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give DSHS 10 days advance written notice of cancellation.

k. General

By requiring insurance, the State of Washington and DSHS do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State and DSHS in this Contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

13. Administrative Records

The Contractor shall retain fiscal records that substantiate all costs charged to DSHS under this Contract.

14. Auditing and Monitoring

DSHS may schedule monitoring visits with the Contractor to evaluate performance of services. The Contractor shall provide at no further cost to DSHS reasonable access to all service-related records and materials, including financial records in support of billings, and records of staff time.

15. Disputes

- a. Either party who has a dispute concerning this Contract may submit a written request for dispute resolution. The amount of any rate set by law, regulation, or DSHS policy is not disputable. A party's written request for dispute resolution must include:
 - (1) A statement identifying the issue(s) in dispute; and
 - (2) The Contractor's name, address and contract number.
- b. The request must be mailed to the following address within thirty (30) calendar days after the party could reasonably be expected to have knowledge of the issue which is disputed:

DSHS/Children's Administration
Attention: Contracts Management Unit
PO Box 45710
Olympia, WA 98504-5710
- c. A copy of the current Children's Administration's dispute resolution process is available at any time by written request to the above address.
- d. This dispute resolution process is the sole administrative remedy available under this Contract.

EXHIBIT C, Sample CAPTA Contract

GENERAL TERMS AND CONDITIONS

1. Advance Payment and Billing Limitations.

- a. DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.
- b. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.
- c. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
- d. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge the state of Washington or any other party for the same services.

2. Amendment. This Contract, or any term or condition, may be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.

3. Assignment. The Contractor shall not assign this Contract, its rights or obligations hereunder, without obtaining the prior written consent of DSHS. DSHS shall not recognize any assignment without such prior written consent. In the event consent is given and this Contract is assigned, all terms and conditions of this Contract shall be binding upon the Contractor's successors and assigns.

4. Compliance with Applicable Law. At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.

5. Confidentiality. The Contractor may use Personal Information and other information gained by reason of this Contract only for the purpose of this Contract. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law or, in the case of Personal Information, without the prior written consent of the person to whom the Personal Information pertains or their legal guardian. The Contractor shall maintain and protect the confidentiality of all Personal Information and other information gained by reason of this Contract. Upon written request by DSHS, Contractor shall either return to DSHS or destroy and certify destruction of, all Personal Information.

6. Contractor Certification Regarding Ethics. The Contractor certifies that the Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.

7. Debarment Certification. The Contractor, by signature to this contract certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement or any Program Agreement by any Federal department or agency. The Contractor also agrees to include the above requirement into any subcontracts entered into, resulting directly from the Contractor's duty to provide services under this Contract.

8. Governing Law and Venue. This Contract shall be governed by the laws of the state of Washington. In the event of any action brought hereunder, venue shall be proper only in Thurston County, Washington.

- 9. Health and Safety.** Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health and safety of any DSHS client with whom the Contractor has contact.
- 10. Indemnification and Hold Harmless.**
- a. The Contractor shall be responsible for and shall indemnify, defend, and hold DSHS harmless from all claims, loss, liability, damages, or fines arising out of or relating to a) the Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of the Contractor or any Subcontractor.
 - b. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.
- 11. Independent Contractor.** The Contractor hereby acknowledges that the Contractor is an independent contractor and not an officer, employee, or agent of DSHS or the state of Washington. The Contractor shall not represent itself as, nor claim status as, an officer, employee, or agent of DSHS or the state of Washington. The Contractor shall not claim for the Contractor or the Contractor's employees any rights, privileges, or benefits which would accrue to an employee of the state of Washington. Contractor shall not be eligible to participate in DSHS' employee benefit programs, including but not limited to, group insurance, retirement, vacation and other such benefits. Contractor shall be responsible for the payment of its internal administrative costs, including but not limited to, federal, state and social security tax payments. The Contractor shall indemnify and hold DSHS harmless from all obligations to pay or withhold federal or state taxes or contributions on behalf of the Contractor or the Contractor's employees.
- 12. Industrial Insurance Coverage.** The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.
- 13. Inspection.** During the term of this Contract and for one (1) year following termination or expiration of this Contract, the Contractor shall provide reasonable access to the Contractor's place of business, Contractor records, and client records, to DSHS and to any authorized agent of the state of Washington or the federal government in order to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and this Contract.
- 14. Maintenance of Records.** During the term of this Contract and for six (6) years following termination or expiration of this Contract, the Contractor shall maintain records sufficient to:
- a. Document performance of all acts required by law, regulation, or this Contract;
 - b. Substantiate the Contractor's statement of its organization's structure, tax status, capabilities, and performance; and
 - c. Demonstrate accounting procedures, practices, and records which sufficiently and properly document the Contractor's invoices to DSHS and all expenditures made by the Contractor to perform as required by this Contract.
- 15. Notice of Overpayment.** If the Contractor receives a vendor overpayment notice or a letter

communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:

- a. Be *received* by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;
- b. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;
- c. Include a statement as to why the Contractor thinks the notice is incorrect; and
- d. Include a copy of the overpayment notice.

Timely and complete requests will be scheduled for a formal hearing by the Office of Administrative Hearings. The Contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a vendor overpayment notice or other overpayment letter will result in an overpayment debt against the Contractor. DSHS may charge the Contractor interest and any costs associated with the collection of this overpayment. DSHS may collect an overpayment debt through lien, foreclosure, seizure and sale of the Contractor's real or personal property; order to withhold and deliver; or any other collection action available to DSHS to satisfy the overpayment debt.

- 16. OFM Filing Requirement.** Under Chapter 39.29 RCW, certain Personal Service Contracts and amendments must be filed with the state of Washington Office of Financial Management (OFM). If this Contract must be filed, then it shall not be effective nor shall work commence or payment be made until reviewed or approved by OFM.
- 17. Order of Precedence.** In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:
 - a. Applicable federal and state of Washington statutes and regulations;
 - b. Special Terms and Conditions contained in this Contract;
 - c. General Terms and Conditions contained in this Contract;
 - d. Exhibits, if any, as indicated on page one of this Contract;
 - e. DSHS solicitation documents, if any, associated with this Contract;
 - f. Any other material incorporated herein by reference.
- 18. Ownership of Material.** Material created by the Contractor and paid for by DSHS as a part of any this Contract shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the Contractor uses to perform the Contract but is not created for or paid for by DSHS is owned by the Contractor and is not "work made for hire"; however, DSHS shall have a perpetual license to use this material for DSHS internal purposes at no charge to DSHS, provided that such license shall be limited to the extent which the Contractor has a right to grant such a license.
- 19. Severability.** The terms and conditions of this Contract are severable. If any term or condition of this Contract is held invalid by any court, such invalidity shall not affect the validity of the other terms or

conditions of this Contract.

- 20. Subcontracting.** Except as otherwise provided in this Contract, the Contractor shall not Subcontract any of the contracted services without the prior approval of DSHS as specified in a written amendment to this Contract. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. Any failure of Contractor or its Subcontractors to perform the obligations of this Contract shall not discharge the Contractor from its obligations hereunder or diminish DSHS' rights or remedies available under this Contract.
- 21. Subrecipients.**
- a. General. If the Contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133 and this Agreement, the Contractor shall:
 - (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
 - (2) Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;
 - (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
 - (4) Incorporate OMB Circular A-133 audit requirements into all agreements between the Contractor and its Subcontractors who are subrecipients;
 - (5) Comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation;
 - (6) Comply with the applicable requirements of OMB Circular A-87 and any future amendments to OMB Circular A-87, and any successor or replacement Circular or regulation; and
 - (7) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to www.ojp.usdoj.gov/ocr/ for additional information and access to the aforementioned Federal laws and regulations.)
 - b. Single Audit Act Compliance. If the Contractor is a subrecipient and expends \$500,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:
 - (1) Submit to the DSHS contact person the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
 - (2) Follow-up and develop corrective action for all audit findings; in accordance with OMB Circular A-133, prepare a "Summary Schedule of Prior Audit Findings."
 - c. Overpayments. If it is determined by DSHS, or during the course of a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, DSHS may require the Contractor to reimburse DSHS in accordance with OMB Circular A-87.

- 22. Survivability.** The terms and conditions contained in this Contract that shall survive the expiration or termination of this Contract, include but are not limited to: Confidentiality, Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination or Expiration Procedure, Treatment of Property.
- 23. Termination Due to Change in Funding.** If the funds DSHS relied upon to establish this Contract are withdrawn or reduced, or if additional or modified conditions are placed on such funding, DSHS may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice.
- 24. Termination for Convenience.** DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice.
- 25. Termination for Default.** The Contracts Administrator may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:
- a. Failed to meet or maintain any requirement for contracting with DSHS;
 - b. Failed to protect the health or safety of any DSHS client pursuant to Section 9, Health and Safety, of this Contract;
 - c. Failed to perform under, or otherwise breached, any term or condition of this Contract; and/or
 - d. Violated any applicable law or regulation.
 - e. If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.
- 26. Termination or Expiration Procedure.** The following terms and conditions apply upon Contract termination or expiration:
- a. The Contractor shall cease to perform any services required by this Contract as of the effective date of termination or expiration.
 - b. If the Contract is terminated, the Contractor shall comply with all instructions contained in the termination notice.
 - c. The Contractor shall immediately deliver to the DSHS contact named on page one of this Contract, or to his or her successor, all DSHS property in the Contractor's possession, including any "works for hire" as described in Section 17, Ownership of Material. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of the effective date of termination or expiration of this Contract. Upon failure to return DSHS property within ten (10) calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation.
 - d. DSHS shall be liable only for payment required under the terms of this Contract for service rendered up to the effective date of termination or expiration.
 - e. DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability.
 - f. The rights and remedies provided to DSHS in this Section are in addition to any other rights and remedies provided at law, in equity, and/or under this Contract, including consequential and incidental damages.

EXHIBIT C, Sample CAPTA Contract

- 27. Treatment of Property.** All property purchased or furnished by DSHS for use by the Contractor during this Contract term shall remain with DSHS. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by DSHS under this Contract shall pass to and vest in DSHS. The Contractor shall protect, maintain, and insure all DSHS property in its possession against loss or damage and shall return DSHS property to DSHS upon Contract termination or expiration.
- 28. Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract unless amended as set forth in Section 2, Amendment. Only the Contracts Administrator or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL